

# Exhibit 8

**From:** [Pai, Rohan](#)  
**To:** [Ewart, Jason C.](#); [Dickinson, Charles](#); [Hall, Laura](#); [Wint, Corene](#); [Ma, Rachel](#); [RobertBernheim-contact](#); [JaymeWeber-contact](#); [NicoleGordon-contact](#); [ShiraHoffman-contact](#); [AmandaHamilton-contact](#); [WillMargrabe-contact](#); [PaulHarper-contct](#); [BrianYost-contact](#); [SchonetteWalker-contact](#); [GaryHonick-contact](#); [LucusTucker-contact](#); [SamanthaFeeley-contact](#); [JeffHerrera-contact](#); [JuliaMeade-contact](#); [CherylHiemstra-contact](#); [AngieMilligan-contact](#); [ChristineCortez-contact](#); [WilliamYoung-contact](#)  
**Cc:** [Wolf, Matthew M.](#); [Pfaffenroth, Sonia Kuester](#); [Davis, Joshua M.](#); [Kientzle, Michael](#); [Harik, Yasmine](#); [Holler, John](#); [Cleveland, Christina](#); [mark.perry@weil.com](#); [zzz.External.Luna.Barrington@weil.com](#); [zzz.External.Bambo.Obaro@weil.com](#); [zzz.External.Luke.Sullivan@weil.com](#); [thassi@debevoise.com](#); [mschaper@debevoise.com](#); [srselden@debevoise.com](#); [zzz.External.nborn@debevoise.com](#); [jmfried@debevoise.com](#); [mcardena@debevoise.com](#); [tebuckley@debevoise.com](#); [htmehler@debevoise.com](#); [msventim@debevoise.com](#); [zzz.External.mike.cowie@dechert.com](#); [zzz.External.james.fishkin@dechert.com](#); [zzz.External.thomas.miller@dechert.com](#); [zzz.External.emainiqi@wc.com](#); [jpitt@wc.com](#); [zzz.External.apodoll@wc.com](#); [Holler, John](#); [Ellingsen, Andrew](#)  
**Subject:** RE: 3:24-cv-00347-AN FTC et al. v. Kroger Co. et al. - Expert Report of Dr. Mark Israel  
**Date:** Thursday, August 1, 2024 9:57:51 AM  
**Attachments:** [image001.png](#)

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External E-mail

Jay,

Given Dr. Israel's substantial, and now repeated, improper attempts to offer new opinions well after the close of discovery, additional deposition time cannot cure the prejudice to the FTC. We will file our motion tomorrow. Please confirm that Defendants agree to our proposed briefing schedule, or if Defendants think it would be helpful to meet and confer today.

Regards,  
Rohan

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**From:** Ewart, Jason C. <[Jason.Ewart@arnoldporter.com](mailto:Jason.Ewart@arnoldporter.com)>  
**Sent:** Wednesday, July 31, 2024 8:23 PM  
**To:** Pai, Rohan <[rpai@ftc.gov](mailto:rpai@ftc.gov)>; Dickinson, Charles <[cdickinson@ftc.gov](mailto:cdickinson@ftc.gov)>; Hall, Laura <[lhall1@ftc.gov](mailto:lhall1@ftc.gov)>; Wint, Corene <[cwint@ftc.gov](mailto:cwint@ftc.gov)>; Ma, Rachel <[rma@ftc.gov](mailto:rma@ftc.gov)>; RobertBernheim-contact <[Robert.Bernheim@azag.gov](mailto:Robert.Bernheim@azag.gov)>; JaymeWeber-contact <[Jayme.Weber@azag.gov](mailto:Jayme.Weber@azag.gov)>; NicoleGordon-contact <[Nicole.Gordon@doj.ca.gov](mailto:Nicole.Gordon@doj.ca.gov)>; ShiraHoffman-contact <[Shira.Hoffman@doj.ca.gov](mailto:Shira.Hoffman@doj.ca.gov)>; AmandaHamilton-contact <[Amanda.Hamilton@dc.gov](mailto:Amanda.Hamilton@dc.gov)>; WillMargrabe-contact <[will.margrabe@dc.gov](mailto:will.margrabe@dc.gov)>; PaulHarper-contct <[Paul.Harper@ilag.gov](mailto:Paul.Harper@ilag.gov)>; BrianYost-contact <[Brian.Yost@ilag.gov](mailto:Brian.Yost@ilag.gov)>; SchonetteWalker-contact <[swalker@oag.state.md.us](mailto:swalker@oag.state.md.us)>; GaryHonick-contact <[ghonick@oag.state.md.us](mailto:ghonick@oag.state.md.us)>; LucasTucker-contact <[LTucker@ag.nv.gov](mailto:LTucker@ag.nv.gov)>; SamanthaFeeley-contact <[SFeeley@ag.nv.gov](mailto:SFeeley@ag.nv.gov)>; JeffHerrera-contact <[jherrera@nmag.gov](mailto:jherrera@nmag.gov)>; JuliaMeade-contact <[jmeade@nmag.gov](mailto:jmeade@nmag.gov)>; CherylHiemstra-contact <[Cheryl.Hiemstra@doj.state.or.us](mailto:Cheryl.Hiemstra@doj.state.or.us)>; AngieMilligan-contact <[amilligan@lvklaw.com](mailto:amilligan@lvklaw.com)>; ChristineCortez-contact <[cortez@lvklaw.com](mailto:cortez@lvklaw.com)>; WilliamYoung-contact <[william.young@wyo.gov](mailto:william.young@wyo.gov)>  
**Cc:** Wolf, Matthew M. <[Matthew.Wolf@arnoldporter.com](mailto:Matthew.Wolf@arnoldporter.com)>; Pfaffenroth, Sonia Kuester <[Sonia.Pfaffenroth@arnoldporter.com](mailto:Sonia.Pfaffenroth@arnoldporter.com)>; Davis, Joshua M. <[Joshua.Davis@arnoldporter.com](mailto:Joshua.Davis@arnoldporter.com)>; Kientzle, Michael <[Michael.Kientzle@arnoldporter.com](mailto:Michael.Kientzle@arnoldporter.com)>; Yasmine Harik -contact <[yasmine.harik@arnoldporter.com](mailto:yasmine.harik@arnoldporter.com)>; Holler, John <[John.Holler@arnoldporter.com](mailto:John.Holler@arnoldporter.com)>; Cleveland, Christina <[Christina.Cleveland@arnoldporter.com](mailto:Christina.Cleveland@arnoldporter.com)>; mark.perry@weil.com; Luna.Barrington@weil.com; Bambo.Obaro@weil.com; Luke.Sullivan@weil.com;

thassi@debevoise.com; mschaper@debevoise.com; srselden@dbevoise.com; nborn@debevoise.com; jmfried@debevoise.com; mcardena@debevoise.com; tebuckley@dbevoise.com; htmehler@dbevoise.com; msventim@dbevoise.com; mike.cowie@dechert.com; james.fishkin@dechert.com; thomas.miller@dechert.com; emainigi@wc.com; jpitt@wc.com; apodoll@wc.com; Holler, John <John.Holler@arnoldporter.com>; Ellingsen, Andrew <Andrew.Ellingsen@arnoldporter.com>

**Subject:** RE: 3:24-cv-00347-AN FTC et al. v. Kroger Co. et al. - Expert Report of Dr. Mark Israel

Rohan –

Defendants do not agree to withdraw either Dr. Israel's July 20 corrected report or his surrebuttal report served yesterday.

With respect to the July 20 corrected report, which was used by Plaintiffs throughout Dr. Israel's deposition, we are puzzled by the government's apparent position that Dr. Israel's testimony now should rely on the incorrect information that his July 20 submission corrected.

With respect to the July 30 surrebuttal, as Dr. Israel testified when describing the substance of the analysis during his deposition, he was responding to an analysis Dr. Hill raised for the first time in rebuttal. Although Defendants objected to Plaintiffs holding open Dr. Israel's deposition, Defendants will agree to make Dr. Israel available for a further one hour deposition limited to the July 30 surrebuttal report or, in the alternative, agree to a short surrebuttal by Dr. Hill limited to responding to Dr. Israel's surrebuttal report.

We are available to discuss. Please let us know by noon tomorrow how you would like to proceed.

Thanks,  
Jay

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**From:** Pai, Rohan <rpa@ftc.gov>  
**Sent:** Wednesday, July 31, 2024 12:47 PM  
**To:** Ewart, Jason C. <Jason.Ewart@arnoldporter.com>; Dickinson, Charles <cdickinson@ftc.gov>; Hall, Laura <lhall1@ftc.gov>; Wint, Corene <cwint@ftc.gov>; Ma, Rachel <rma@ftc.gov>; RobertBernheim-contact <Robert.Bernheim@azag.gov>; JaymeWeber-contact <Jayme.Weber@azag.gov>; NicoleGordon-contact <Nicole.Gordon@doj.ca.gov>; ShiraHoffman-contact <Shira.Hoffman@doj.ca.gov>; AmandaHamilton-contact <Amanda.Hamilton@dc.gov>; WillMargrabe-contact <will.margrabe@dc.gov>; PaulHarper-contct <Paul.Harper@ilag.gov>; BrianYost-contact <Brian.Yost@ilag.gov>; SchonetteWalker-contact <swalker@oag.state.md.us>; GaryHonick-contact <ghonick@oag.state.md.us>; LucasTucker-contact <LTucker@ag.nv.gov>; SamanthaFeeley-contact <SFeeley@ag.nv.gov>; JeffHerrera-contact <jherrera@nmag.gov>; JuliaMeade-contact <jmeade@nmag.gov>; CherylHiemstra-contact <Cheryl.Hiemstra@doj.state.or.us>; AngieMilligan-contact <amilligan@lvklaw.com>; ChristineCortez-contact <cortez@lvklaw.com>; WilliamYoung-contact <william.young@wyo.gov>  
**Cc:** Wolf, Matthew M. <Matthew.Wolf@arnoldporter.com>; Pfaffenroth, Sonia Kuester

<Sonia.Pfaffenroth@arnoldporter.com>; Davis, Joshua M. <Joshua.Davis@arnoldporter.com>; Kientzle, Michael <Michael.Kientzle@arnoldporter.com>; Harik, Yasmine <Yasmine.Harik@arnoldporter.com>; Holler, John <John.Holler@arnoldporter.com>; Cleveland, Christina <Christina.Cleveland@arnoldporter.com>; mark.perry@weil.com; zzz.External.Luna.Barrington@weil.com <Luna.Barrington@weil.com>; zzz.External.Bambo.Obaro@weil.com <Bambo.Obaro@weil.com>; zzz.External.Luke.Sullivan@weil.com <Luke.Sullivan@weil.com>; thassi@debevoise.com; mschaper@debevoise.com; srselden@dbevoise.com; zzz.External.nborn@dbevoise.com <nborn@dbevoise.com>; jmfried@dbevoise.com; mcardena@dbevoise.com; tebuckley@dbevoise.com; htmehler@dbevoise.com; msventim@dbevoise.com; zzz.External.mike.cowie@dechert.com <mike.cowie@dechert.com>; zzz.External.james.fishkin@dechert.com <james.fishkin@dechert.com>; zzz.External.thomas.miller@dechert.com <thomas.miller@dechert.com>; zzz.External.emainigi@wc.com <emainigi@wc.com>; jpitt@wc.com; zzz.External.apodoll@wc.com <apodoll@wc.com>; Holler, John <John.Holler@arnoldporter.com>; Ellingsen, Andrew <Andrew.Ellingsen@arnoldporter.com>

**Subject:** RE: 3:24-cv-00347-AN FTC et al. v. Kroger Co. et al. - Expert Report of Dr. Mark Israel

External E-mail

Counsel,

Dr. Israel's second corrected report served on July 20 and surreply report served on July 30 are untimely and improper under the scheduling orders in the administrative proceeding and in the Oregon action. Please let us know by 5pm today whether Defendants will withdraw these reports in both actions or if you wish to meet and confer on this issue. Assuming that you will not agree to withdraw these reports, we will move to exclude both reports and related testimony on Friday. We will accompany our brief with a request that any opposition brief be due on Monday (rather than on Sunday as required by Paragraph 17 of Judge Nelson's CMSO). We will be prepared to argue this motion at our conference with the Court on Wednesday.

Regards,

Rohan Pai

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**From:** Ewart, Jason C. <[Jason.Ewart@arnoldporter.com](mailto:Jason.Ewart@arnoldporter.com)>

**Sent:** Tuesday, July 30, 2024 11:30 PM

**To:** Pai, Rohan <[rpai@ftc.gov](mailto:rpai@ftc.gov)>; Dickinson, Charles <[cdickinson@ftc.gov](mailto:cdickinson@ftc.gov)>; Hall, Laura <[lhall1@ftc.gov](mailto:lhall1@ftc.gov)>; Wint, Corene <[cwint@ftc.gov](mailto:cwint@ftc.gov)>; Ma, Rachel <[rma@ftc.gov](mailto:rma@ftc.gov)>; RobertBernheim-contact <[Robert.Bernheim@azag.gov](mailto:Robert.Bernheim@azag.gov)>; JaymeWeber-contact <[Jayme.Weber@azag.gov](mailto:Jayme.Weber@azag.gov)>; NicoleGordon-contact <[Nicole.Gordon@doj.ca.gov](mailto:Nicole.Gordon@doj.ca.gov)>; ShiraHoffman-contact <[Shira.Hoffman@doj.ca.gov](mailto:Shira.Hoffman@doj.ca.gov)>; AmandaHamilton-contact <[Amanda.Hamilton@dc.gov](mailto:Amanda.Hamilton@dc.gov)>; WillMargrabe-contact <[will.margrabe@dc.gov](mailto:will.margrabe@dc.gov)>; PaulHarper-contct <[Paul.Harper@ilag.gov](mailto:Paul.Harper@ilag.gov)>; BrianYost-contact <[Brian.Yost@ilag.gov](mailto:Brian.Yost@ilag.gov)>; SchonetteWalker-contact <[swalker@oag.state.md.us](mailto:swalker@oag.state.md.us)>;

GaryHonick-contact <[ghonick@oag.state.md.us](mailto:ghonick@oag.state.md.us)>; LucasTucker-contact <[LTucker@ag.nv.gov](mailto:LTucker@ag.nv.gov)>;  
SamanthaFeeley-contact <[SFeeley@ag.nv.gov](mailto:SFeeley@ag.nv.gov)>; JeffHerrera-contact <[jherrera@nmag.gov](mailto:jherrera@nmag.gov)>;  
JuliaMeade-contact <[jmeade@nmag.gov](mailto:jmeade@nmag.gov)>; CherylHiemstra-contact  
<[Cheryl.Hiemstra@doj.state.or.us](mailto:Cheryl.Hiemstra@doj.state.or.us)>; AngieMilligan-contact <[amilligan@lvklaw.com](mailto:amilligan@lvklaw.com)>;  
ChristineCortez-contact <[cortez@lvklaw.com](mailto:cortez@lvklaw.com)>; WilliamYoung-contact <[william.young@wyo.gov](mailto:william.young@wyo.gov)>  
**Cc:** Wolf, Matthew M. <[Matthew.Wolf@arnoldporter.com](mailto:Matthew.Wolf@arnoldporter.com)>; Pfaffenroth, Sonia Kuester  
<[Sonia.Pfaffenroth@arnoldporter.com](mailto:Sonia.Pfaffenroth@arnoldporter.com)>; Davis, Joshua M. <[Joshua.Davis@arnoldporter.com](mailto:Joshua.Davis@arnoldporter.com)>;  
Kientzle, Michael <[Michael.Kientzle@arnoldporter.com](mailto:Michael.Kientzle@arnoldporter.com)>; Yasmine Harik -contact  
<[yasmine.harik@arnoldporter.com](mailto:yasmine.harik@arnoldporter.com)>; Holler, John <[John.Holler@arnoldporter.com](mailto:John.Holler@arnoldporter.com)>; Cleveland,  
Christina <[Christina.Cleveland@arnoldporter.com](mailto:Christina.Cleveland@arnoldporter.com)>; [mark.perry@weil.com](mailto:mark.perry@weil.com);  
[Luna.Barrington@weil.com](mailto:Luna.Barrington@weil.com); [Bambo.Obaro@weil.com](mailto:Bambo.Obaro@weil.com); [Luke.Sullivan@weil.com](mailto:Luke.Sullivan@weil.com);  
[thassi@debevoise.com](mailto:thassi@debevoise.com); [mschaper@debevoise.com](mailto:mschaper@debevoise.com); [srselden@dbevoise.com](mailto:srselden@dbevoise.com);  
[nborn@debevoise.com](mailto:nborn@debevoise.com); [jmfried@debevoise.com](mailto:jmfried@debevoise.com); [mcardena@debevoise.com](mailto:mcardena@debevoise.com);  
[tebuckley@debevoise.com](mailto:tebuckley@debevoise.com); [htmehler@debevoise.com](mailto:htmehler@debevoise.com); [msventim@debevoise.com](mailto:msventim@debevoise.com);  
[mike.cowie@dechert.com](mailto:mike.cowie@dechert.com); [james.fishkin@dechert.com](mailto:james.fishkin@dechert.com); [thomas.miller@dechert.com](mailto:thomas.miller@dechert.com);  
[emainigi@wc.com](mailto:emainigi@wc.com); [jpitt@wc.com](mailto:jpitt@wc.com); [apodoll@wc.com](mailto:apodoll@wc.com); Holler, John <[John.Holler@arnoldporter.com](mailto:John.Holler@arnoldporter.com)>;  
Ellingsen, Andrew <[Andrew.Ellingsen@arnoldporter.com](mailto:Andrew.Ellingsen@arnoldporter.com)>  
**Subject:** RE: 3:24-cv-00347-AN FTC et al. v. Kroger Co. et al. - Expert Report of Dr. Mark Israel

Counsel –

Please see the attached surrebuttal report of Dr. Mark Israel. This report has been designated Highly Confidential pursuant to Paragraph 7 of the Stipulated Protective Order entered by Judge Nelson on April 29, 2024 in this matter on February 27, 2024.

Pursuant to Paragraph 11(b) of the Case Management and Scheduling Order entered by Judge Nelson on April 12, 2024, the backup data for the report will be sent in a separate email. The backup file has the following password: **tXCXU2eNRnOeXLK**.

Thanks,  
Jay Ewart

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**From:** Ewart, Jason C. <[Jason.Ewart@arnoldporter.com](mailto:Jason.Ewart@arnoldporter.com)>  
**Sent:** Saturday, July 20, 2024 8:13 PM  
**To:** Dickinson, Charles <[cdickinson@ftc.gov](mailto:cdickinson@ftc.gov)>; Pai, Rohan <[rpai@ftc.gov](mailto:rpai@ftc.gov)>; Hall, Laura  
<[lhall1@ftc.gov](mailto:lhall1@ftc.gov)>; Wint, Corene <[cwint@ftc.gov](mailto:cwint@ftc.gov)>; Ma, Rachel <[rma@ftc.gov](mailto:rma@ftc.gov)>; RobertBernheim-  
contact <[Robert.Bernheim@azag.gov](mailto:Robert.Bernheim@azag.gov)>; JaymeWeber-contact <[Jayme.Weber@azag.gov](mailto:Jayme.Weber@azag.gov)>;  
NicoleGordon-contact <[Nicole.Gordon@doj.ca.gov](mailto:Nicole.Gordon@doj.ca.gov)>; ShiraHoffman-contact  
<[Shira.Hoffman@doj.ca.gov](mailto:Shira.Hoffman@doj.ca.gov)>; AmandaHamilton-contact <[Amanda.Hamilton@dc.gov](mailto:Amanda.Hamilton@dc.gov)>;  
WillMargrabe-contact <[will.margrabe@dc.gov](mailto:will.margrabe@dc.gov)>; PaulHarper-contct <[Paul.Harper@ilag.gov](mailto:Paul.Harper@ilag.gov)>;  
BrianYost-contact <[Brian.Yost@ilag.gov](mailto:Brian.Yost@ilag.gov)>; SchonetteWalker-contact <[swalker@oag.state.md.us](mailto:swalker@oag.state.md.us)>;  
GaryHonick-contact <[ghonick@oag.state.md.us](mailto:ghonick@oag.state.md.us)>; LucasTucker-contact <[LTucker@ag.nv.gov](mailto:LTucker@ag.nv.gov)>;  
SamanthaFeeley-contact <[SFeeley@ag.nv.gov](mailto:SFeeley@ag.nv.gov)>; JeffHerrera-contact <[jherrera@nmag.gov](mailto:jherrera@nmag.gov)>;

JuliaMeade-contact <[jmeade@nmag.gov](mailto:jmeade@nmag.gov)>; CherylHiemstra-contact <[Cheryl.Hiemstra@doj.state.or.us](mailto:Cheryl.Hiemstra@doj.state.or.us)>; AngieMilligan-contact <[amilligan@lvklaw.com](mailto:amilligan@lvklaw.com)>; ChristineCortez-contact <[cortez@lvklaw.com](mailto:cortez@lvklaw.com)>; WilliamYoung-contact <[william.young@wyo.gov](mailto:william.young@wyo.gov)>  
**Cc:** Wolf, Matthew M. <[Matthew.Wolf@arnoldporter.com](mailto:Matthew.Wolf@arnoldporter.com)>; Pfaffenroth, Sonia Kuester <[Sonia.Pfaffenroth@arnoldporter.com](mailto:Sonia.Pfaffenroth@arnoldporter.com)>; Davis, Joshua M. <[Joshua.Davis@arnoldporter.com](mailto:Joshua.Davis@arnoldporter.com)>; Kientzle, Michael <[Michael.Kientzle@arnoldporter.com](mailto:Michael.Kientzle@arnoldporter.com)>; Yasmine Harik -contact <[yasmine.harik@arnoldporter.com](mailto:yasmine.harik@arnoldporter.com)>; Holler, John <[John.Holler@arnoldporter.com](mailto:John.Holler@arnoldporter.com)>; Cleveland, Christina <[Christina.Cleveland@arnoldporter.com](mailto:Christina.Cleveland@arnoldporter.com)>; [mark.perry@weil.com](mailto:mark.perry@weil.com); [Luna.Barrington@weil.com](mailto:Luna.Barrington@weil.com); [Bambo.Obaro@weil.com](mailto:Bambo.Obaro@weil.com); [Luke.Sullivan@weil.com](mailto:Luke.Sullivan@weil.com); [thassi@debevoise.com](mailto:thassi@debevoise.com); [mschaper@debevoise.com](mailto:mschaper@debevoise.com); [srselden@dbevoise.com](mailto:srselden@dbevoise.com); [nborn@debevoise.com](mailto:nborn@debevoise.com); [jmfried@debevoise.com](mailto:jmfried@debevoise.com); [mcardena@debevoise.com](mailto:mcardena@debevoise.com); [tebuckley@debevoise.com](mailto:tebuckley@debevoise.com); [htmehler@debevoise.com](mailto:htmehler@debevoise.com); [msventim@debevoise.com](mailto:msventim@debevoise.com); [mike.cowie@dechert.com](mailto:mike.cowie@dechert.com); [james.fishkin@dechert.com](mailto:james.fishkin@dechert.com); [thomas.miller@dechert.com](mailto:thomas.miller@dechert.com); [emainigi@wc.com](mailto:emainigi@wc.com); [jpitt@wc.com](mailto:jpitt@wc.com); [apodoll@wc.com](mailto:apodoll@wc.com); Holler, John <[John.Holler@arnoldporter.com](mailto:John.Holler@arnoldporter.com)>; Ellingsen, Andrew <[Andrew.Ellingsen@arnoldporter.com](mailto:Andrew.Ellingsen@arnoldporter.com)>  
**Subject:** RE: 3:24-cv-00347-AN FTC et al. v. Kroger Co. et al. - Expert Report of Dr. Mark Israel

Counsel –

Please see the attached errata and corrected report of Dr. Mark Israel. This report has been designated Highly Confidential pursuant to Paragraph 7 of the Stipulated Protective Order entered by Judge Nelson on April 29, 2024 in this matter on February 27, 2024.

Pursuant to Paragraph 11(b) of the Case Management and Scheduling Order entered by Judge Nelson on April 12, 2024, the backup data for the errata will be available shortly on the Compass Lexecon SFTP.

Thanks,  
Jay Ewart

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**From:** Ellingsen, Andrew <[Andrew.Ellingsen@arnoldporter.com](mailto:Andrew.Ellingsen@arnoldporter.com)>  
**Sent:** Monday, July 1, 2024 4:26 PM  
**To:** [cdickinson@ftc.gov](mailto:cdickinson@ftc.gov); [rpai@ftc.gov](mailto:rpai@ftc.gov); [lhall1@ftc.gov](mailto:lhall1@ftc.gov); [cwint@ftc.gov](mailto:cwint@ftc.gov); [rma@ftc.gov](mailto:rma@ftc.gov); [robert.bernheim@azag.gov](mailto:robert.bernheim@azag.gov); [jayme.weber@azag.gov](mailto:jayme.weber@azag.gov); [nicole.gordon@doj.ca.gov](mailto:nicole.gordon@doj.ca.gov); [shira.hoffman@doj.ca.gov](mailto:shira.hoffman@doj.ca.gov); [amanda.hamilton@dc.gov](mailto:amanda.hamilton@dc.gov); [will.margrabe@dc.gov](mailto:will.margrabe@dc.gov); [paul.harper@ilag.gov](mailto:paul.harper@ilag.gov); [brian.yost@ilag.gov](mailto:brian.yost@ilag.gov); [swalker@oag.state.md.us](mailto:swalker@oag.state.md.us); [ghonick@oag.state.md.us](mailto:ghonick@oag.state.md.us); [ltucker@ag.nv.gov](mailto:ltucker@ag.nv.gov); [sfeeley@ag.nv.gov](mailto:sfeeley@ag.nv.gov); [jherrera@nmag.gov](mailto:jherrera@nmag.gov); [jmeade@nmag.gov](mailto:jmeade@nmag.gov); [cheryl.hiemstra@doj.state.or.us](mailto:cheryl.hiemstra@doj.state.or.us); [amilligan@lvklaw.com](mailto:amilligan@lvklaw.com); [cortez@lvklaw.com](mailto:cortez@lvklaw.com); [william.young@wyo.gov](mailto:william.young@wyo.gov)  
**Cc:** Wolf, Matthew M. <[Matthew.Wolf@arnoldporter.com](mailto:Matthew.Wolf@arnoldporter.com)>; Pfaffenroth, Sonia Kuester <[Sonia.Pfaffenroth@arnoldporter.com](mailto:Sonia.Pfaffenroth@arnoldporter.com)>; Davis, Joshua M. <[Joshua.Davis@arnoldporter.com](mailto:Joshua.Davis@arnoldporter.com)>; Kientzle, Michael <[Michael.Kientzle@arnoldporter.com](mailto:Michael.Kientzle@arnoldporter.com)>; Ewart, Jason C. <[Jason.Ewart@arnoldporter.com](mailto:Jason.Ewart@arnoldporter.com)>; Harik, Yasmine <[Yasmine.Harik@arnoldporter.com](mailto:Yasmine.Harik@arnoldporter.com)>; Holler, John <[John.Holler@arnoldporter.com](mailto:John.Holler@arnoldporter.com)>; Cleveland, Christina <[Christina.Cleveland@arnoldporter.com](mailto:Christina.Cleveland@arnoldporter.com)>;

[mark.perry@weil.com](mailto:mark.perry@weil.com); [zzz.External.Luna.Barrington@weil.com](mailto:zzz.External.Luna.Barrington@weil.com) <[Luna.Barrington@weil.com](mailto:Luna.Barrington@weil.com)>;  
[zzz.External.Bambo.Obaro@weil.com](mailto:zzz.External.Bambo.Obaro@weil.com) <[Bambo.Obaro@weil.com](mailto:Bambo.Obaro@weil.com)>;  
[zzz.External.Luke.Sullivan@weil.com](mailto:zzz.External.Luke.Sullivan@weil.com) <[Luke.Sullivan@weil.com](mailto:Luke.Sullivan@weil.com)>; [thassi@debevoise.com](mailto:thassi@debevoise.com);  
[mschaper@debevoise.com](mailto:mschaper@debevoise.com); [srselden@dbevoise.com](mailto:srselden@dbevoise.com); [zzz.External.nborn@dbevoise.com](mailto:zzz.External.nborn@dbevoise.com)  
<[nborn@dbevoise.com](mailto:nborn@dbevoise.com)>; [jmfried@dbevoise.com](mailto:jmfried@dbevoise.com); [mcardena@dbevoise.com](mailto:mcardena@dbevoise.com);  
[tebuckley@dbevoise.com](mailto:tebuckley@dbevoise.com); [htmehler@dbevoise.com](mailto:htmehler@dbevoise.com); [msventim@dbevoise.com](mailto:msventim@dbevoise.com);  
[zzz.External.mike.cowie@dechert.com](mailto:zzz.External.mike.cowie@dechert.com) <[mike.cowie@dechert.com](mailto:mike.cowie@dechert.com)>;  
[zzz.External.james.fishkin@dechert.com](mailto:zzz.External.james.fishkin@dechert.com) <[james.fishkin@dechert.com](mailto:james.fishkin@dechert.com)>;  
[zzz.External.thomas.miller@dechert.com](mailto:zzz.External.thomas.miller@dechert.com) <[thomas.miller@dechert.com](mailto:thomas.miller@dechert.com)>;  
[zzz.External.emainigi@wc.com](mailto:zzz.External.emainigi@wc.com) <[emainigi@wc.com](mailto:emainigi@wc.com)>; [jpitt@wc.com](mailto:jpitt@wc.com); [zzz.External.apodoll@wc.com](mailto:zzz.External.apodoll@wc.com)  
<[apodoll@wc.com](mailto:apodoll@wc.com)>; Holler, John <[John.Holler@arnoldporter.com](mailto:John.Holler@arnoldporter.com)>

**Subject:** 3:24-cv-00347-AN FTC et al. v. Kroger Co. et al. - Expert Report of Dr. Mark Israel

Dear Counsel,

Attached please find the expert witness report of Dr. Mark Israel. Note that this report is designated Highly Confidential pursuant to Paragraph 7 of the Stipulated Protective Order entered by Judge Nelson on April 29, 2024.

Pursuant to Paragraph 11(b) of the Case Management and Scheduling Order entered by Judge Nelson on April 12, 2024, the backup data and materials relied upon by Dr. Israel but not previously produced are being sent by FTP to the service list for this matter and the individuals identified by Complaint Counsel at Bates White.

Best,  
Andrew

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Andrew Ellingsen

Associate | [Bio](#)



601 Massachusetts Ave., NW  
Washington, DC 20001-3743  
T: +1 202.942.5721  
[Andrew.Ellingsen@arnoldporter.com](mailto:Andrew.Ellingsen@arnoldporter.com)  
[www.arnoldporter.com](http://www.arnoldporter.com) | [LinkedIn](#)

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